

EXHIBIT L

Case 2:10-cv-04787-DMG-RC Document 1 Filed 06/28/10 Page 1 of 16 Page ID #:1

1 GREGORY R. OXFORD (SGN 62333) FILED

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10 JUN 28 PM 3:09

CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

8 Attorneys for Plaintiff
9 General Motors LLC

BY: _____

10

11

12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA
14 WESTERN DIVISION

15

16 GENERAL MOTORS LLC, a
17 Delaware limited liability company,

18 Plaintiff,

19 vs.

20 SANTA MONICA GROUP, INC., a
21 California corporation; KAYVAN
22 NAIMI, an individual; FARINAZ
23 NAIMI, an individual; KAMRAN
24 NAIMI, an individual; and NILOFAR
25 NAIMI, an individual,

26 Defendants.

27 CV 10 4787-DMG
28 CASE NO. (CRG)

COMPLAINT FOR
(1) DECLARATORY
JUDGMENT THAT WRITTEN
SETTLEMENT AGREEMENT
IN BINDING AND
ENFORCABLE; (2) SPECIFIC
PERFORMANCE OF WRITTEN
SETTLEMENT AGREEMENT;
(3) INJUNCTIVE RELIEF

27

28 Plaintiff General Motors LLC, for its complaint herein, alleges as follows:

29 The Parties and Jurisdiction

30 1. Plaintiff General Motors LLC (hereinafter "plaintiff" or "GM"), is a
31 limited liability company organized and existing under the laws of the State of
32 Delaware with its principal place of business in Detroit, Michigan. GM is in the
33 business of manufacturing and distributing new motor vehicles and related products
34 through a network of independent retail dealers throughout the United States,
35 including California.

36 Complaint

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1 2. Defendant Santa Monica Group, Inc. (hereinafter "SMG") is a
2 corporation organized and existing under the laws of the State of California, with its
3 principal place of business in Santa Monica, California. SMG operates as an
4 authorized Chevrolet and Buick dealer in Santa Monica, California pursuant to the
5 terms of a General Motors Dealer Sales and Service Agreement ("Dealer
6 Agreement"). Defendants Kayvan Naimi, Farinaz Naimi, Kamran Naimi and
7 Nilofar Naimi are citizens of the State of California and are the owners of SMG and
8 of the real property which is utilized in SMG's dealership operations.

9 3. This Court has jurisdiction of this action under 28 U.S.C. § 1331(a)
10 because it arises under federal law, specifically the dealer arbitration provisions
11 contained in Section 747, Consolidated Appropriations Act, 2010, Pub. L. No. 111-
12 117, 123 Stat. 3034 (2009) (“Dealer Arbitration Act”).

13 4. Alternatively, this Court has jurisdiction under 28 U.S.C. §1332(a)(1)
14 because plaintiff and defendant are citizens of different states and the amount in
15 controversy exceeds the sum of Seventy-Five Thousand Dollars (\$75,000)
16 exclusive of interest and costs.

Venue

18 5. Venue is proper in this district under 28 U.S.C. §1331(a)(1) because
19 defendant has its place of business within this district and, alternatively, pursuant to
20 28 U.S.C. §1331(a)(2) because a substantial part of the events or omissions giving
21 rise to GM's claims against defendants occurred within this district.

FACTUAL BACKGROUND

Bankruptcy of General Motors Corporation

24 6. General Motors Corporation n/k/a Motors Liquidation Company ("Old
25 GM") once was one of the world's largest corporations as a global manufacturer
26 and distributor of new motor vehicles and related products.

27 7. Due to the rise of foreign competition, changing market conditions,
28 and other factors, Old GM gradually lost market share in the United States.

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1 8. When the financial markets collapsed in the fall of 2008, Old GM
2 faced a financial crisis. It did not have sufficient liquid assets to meet its short term
3 obligations and could not obtain sufficient credit to address its liquidity needs.

4 9. Caught in a difficult situation, Old GM sought assistance from the
5 United States government. The government responded by authorizing a \$ 13.4
6 billion loan to Old GM under the Troubled Asset Relief Program. In connection
7 with this loan, Old GM was required to present a restructuring plan to the
8 government no later than February 17, 2009.

9 10. In its restructuring plan, Old GM proposed many significant business
10 changes, including a substantial reduction in the number of authorized GM
11 dealerships in the United States. Simply put, given Old GM's reduced market
12 share, it had too many dealerships; as a result, many dealerships had difficulty
13 maintaining the new vehicle sales volume necessary for them to be profitable and
14 reinvest in GM's retail automotive sales business.

15 11. On March 30, 2009, the President's Automotive Task Force rejected
16 Old GM's restructuring plan, stating among other things that Old GM needed to
17 speed up and increase the proposed reductions in its dealer network.

18 12. On June 1, 2009, Old GM was forced to file a voluntary petition for
19 bankruptcy in the United States Bankruptcy Court for the Southern District of New
20 York (the "Bankruptcy Court").

21 13. The Bankruptcy Court subsequently approved the sale of certain assets
22 of Old GM to GM under section 363 of the Bankruptcy Code (11 U.S.C. § 363).
23 As part of this sale, the Bankruptcy Court approved further efforts to scale back Old
24 GM's dealer network.

25 14. In most cases, Old GM executed and then assigned to GM "Wind-
26 Down Agreements" with virtually all GM dealers who were not going to be
27 retained by GM, including SMG. Under the Wind-Down Agreements, non-retained
28 dealers like SMG received compensation and were permitted to continue certain

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1 dealership operations until October 31, 2010, when they were required to terminate
2 their Dealer Agreements. In a few cases in which non-retained dealers declined to
3 execute Wind-Down Agreements, Old GM successfully moved to reject the
4 dealers' executory Dealer Agreements under section 365 of the Bankruptcy Code
5 (11 U.S.C. § 365).

6 15. After the section 363 sale closed on July 10, 2009, GM began doing
7 business outside bankruptcy under the terms and conditions approved by the
8 Bankruptcy Court.

9 **The Arbitration Act**

10 16. In December 2009, Congress passed and President Obama signed the
11 Dealer Arbitration Act which permitted "wind-down dealers" such as SMG to file
12 demands for arbitration and, if successful in arbitration, receive a "normal and
13 customary letter of intent" from GM that would permit them, assuming certain
14 conditions were satisfied, to be added back to the GM dealer network.

15 17. SMG did file a demand for arbitration and, pursuant to procedures
16 contemplated by Congress and implemented by the American Arbitration
17 Association, an arbitration hearing was held before Arbitrator Lawrence J. Kaplan
18 on June 8 and 9, 2010 in Santa Ana, California. During the course of these
19 proceedings, GM and SMG entered into a confidential settlement and settlement
20 documentation was prepared which was executed on behalf of SMG on June 18,
21 2010 and delivered by counsel for SMG to counsel for GM on June 21, 2010. A
22 copy of the signed agreement ("Settlement Agreement") is submitted herewith with
23 an application permitting it to be filed under seal as Exhibit A to this complaint.

24 18. On June 22, 2010, counsel for SMG, Michael M. Sieving, verbally
25 informed counsel for GM, Gregory R. Oxford, that, contrary to the Settlement
26 Agreement which requires SMG to request that AAA immediately dismiss the
27 arbitration proceedings, his clients had instructed him to attempt to schedule an

28

sblatt

From: Eric Snyder [esnyder@wilkauslander.com]
Sent: Thursday, September 16, 2010 11:57 AM
To: John Gentile; Steve Blatt
Subject: FW: Westlaw Results : 2010 WL 2740166

See attached case. When GM could not get a dealer to execute an agreed to settlement, what did it do: it went into district court in California to restrain the continuation of the arbitration.

The name of the firm has changed to Wilk Auslander LLP. My new email address is esnyder@wilkauslander.com

Eric J. Snyder
Wilk Auslander LLP
675 Third Avenue
New York, New York 10017
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From: westlaw@westlaw.com [mailto:westlaw@westlaw.com]
Sent: Thursday, September 16, 2010 11:33 AM
To: Eric Snyder
Subject: Westlaw Results : 2010 WL 2740166

Westlaw Delivery Summary Report for SNYDER,ERIC

Your Search:	"Dealer Arbitration Act"
Date/Time of Request:	Thursday, September 16, 2010 10:33 Central
Client Identifier:	RALLY
Database:	ALLFEDS
Citation Text:	Not Reported in F.Supp.2d
Lines:	213
Documents:	1
Images:	0
Recipient(s):	esnyder@wilkauslander.com

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1 additional hearing day with Arbitrator Kaplan in order to complete the arbitration
2 hearing.

3 19. Under the Dealer Arbitration Act, arbitration hearings must be
4 completed no later than June 14, subject to the Arbitrator's power to extend this
5 deadline for up to 30 days. Arbitrator Kaplan has granted such an extension. As a
6 result, the arbitration between SMG and GM must be completed, if at all, no later
7 than July 14, 2010.

8 20. SMG's failure to request immediate dismissal of the arbitration
9 proceedings and apparent attempt to repudiate the Settlement Agreement constitute
10 material breaches of the Settlement Agreement.

11 21. GM has performed each and all of its obligations pursuant to the
12 Settlement Agreement except to the extent such performance has been prevented by
13 SMG's material breaches. The Settlement Agreement is a valid, binding and
14 enforceable contract that requires SMG to request dismissal of the arbitration
15 proceedings forthwith.

16 22. Congress deliberately chose to limit the scope of arbitration under the
17 Dealer Arbitration Act. Arbitrators are only empowered to decide whether or not
18 the specific dealership should be added back to the GM dealer network. All other
19 issues that arise under the Act must be addressed by a court of competent
20 jurisdiction.

21 23. Absent a prompt order from this Court (a) requiring SMG to
22 specifically perform its obligations under the Settlement Agreement, including its
23 obligation to request dismissal of the arbitration proceedings, or (b) enjoining SMG
24 from continuing to prosecute the arbitration proceedings, GM will be required to
25 complete the arbitration proceedings within a very short period of time at
26 significant expense and, more importantly, will be required to run the risk of
27 suffering an adverse determination – the precise risk that the parties mutually
28 agreed to avoid by entering into the Settlement Agreement.

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1 24. Beyond SMG's agreement to request immediate dismissal of the
2 AAA arbitration proceedings, Paragraphs 4.1 and 4.2 of the Settlement Agreement
3 include a broad form of release in which SMG releases and discharges (with
4 specified exceptions) all known and unknown claims against GM. Paragraph 4.3
5 includes a "covenant not to sue" GM which includes SMG's commitment not to
6 "assert any claim that is covered by the release provision in paragraphs 4.1 and
7 4.2," which obviously includes SMG's claim under the Dealer Arbitration Act
8 which it is now attempting to revive.

9 25. Paragraph 4.3 goes on to provide that, in the event that SMG attempts
10 to assert a claim that is barred by the broad form of release found in paragraphs 4.1
11 and 4.2, GM will suffer irreparable harm and therefore shall be entitled to
12 immediate equitable relief:

13 "Notwithstanding anything to the contrary, the Dealer Parties [*i.e.*,
14 SMG and the Naimis] acknowledge and agree that any breach of this
15 covenant not to sue will cause irreparable harm to GM and therefore
16 agree that GM shall be entitled to available equitable remedies,
17 including, without limitation, injunctive relief, upon the breach of
18 such covenant not to sue by any of the Dealer Parties."

19 26. Finally, paragraph 4.4 of the Settlement Agreement provides that
20 "SMG ... shall indemnify, defend and hold GM, its Affiliates
21 and their respective members, partners, venturers, stockholders,
22 officers, directors, employees, agents, spouses, legal representatives,
23 successors and assigns (the "GM Indemnified Parties") harmless,
24 from and against any and all claims, demands, fines, penalties, suits,
25 causes of action, liabilities, losses, damages, costs of settlement, and
26 expenses (including, without limitation, reasonable attorneys' fees and
27 costs) which may be imposed upon or incurred by the GM
28 Indemnified Parties, or any of them, arising from, relating to, or

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1 caused by [SMG's] breach of this Agreement or SMG's execution or
2 delivery of or performance under this Agreement."

FIRST CLAIM FOR RELIEF

(Declaratory Judgment)

27. GM repeats and incorporates by reference its allegations contained in paragraphs 1 through 26 *supra*.

7 28. SMG by its repudiation and material breach of the Settlement
8 Agreement has created an actual controversy concerning the enforceability of that
9 agreement. By virtue of the clear provisions of the Settlement Agreement, GM is
10 entitled pursuant to 28 U.S.C. § 2201 *et seq.* to a judicial declaration that the
11 Settlement Agreement is a valid, binding and enforceable contract and obligation of
12 SMG and that SMG accordingly is required to request immediate dismissal of the
13 AAA arbitration proceedings and perform its other obligations under the Settlement
14 Agreement, including the submission to the California New Motor Vehicle Board,
15 of a proposed Stipulated Decision in order that the terms of the settlement can be
16 fully implemented as soon as possible.

SECOND CLAIM FOR RELIEF

(Specific Performance of Settlement Agreement)

19 29. GM repeats and incorporates by reference its allegations contained in
20 paragraphs 1 through 28 *supra*.

21 30. The Settlement Agreement is a valid, binding and enforceable contract
22 between SMG and GM.

23 31. SMG has materially breached and repudiated the contract.

24 32. SMG's breach threatens GM with irreparable harm inasmuch as
25 without judicial intervention enforcing the Settlement Agreement GM will be
26 forced to complete the arbitration proceedings which SMG has agreed to dismiss
27 and to run the risk of an adverse determination which it bargained to avoid.

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1 33. GM has no adequate remedy at law, as damages will not adequately
2 compensate if for the risk of an adverse determination in the arbitration, which will
3 force GM to continue involuntarily and indefinitely its unsatisfactory contractual
4 relationship with SMG. Absent the beneficial provisions of the Settlement
5 Agreement, SMG's continued status as a Buick and Chevrolet dealer will injure
6 GM in an amount not readily calculable but certainly in excess of \$75,000
7 exclusive of interest and costs inasmuch as (a) SMG does not effectively sell Buick
8 and Chevrolet vehicles in its assigned market in Santa Monica and West Los
9 Angeles; in fact, its new vehicle sales performance for Chevrolet in 2008 was the
10 worst of any Chevrolet dealer in the State of California which remains in business;
11 and (b) SMG due to state franchise laws (which are preempted by the Dealer
12 Arbitration Act) would, absent the beneficial provisions of the Settlement
13 Agreement, be in a position to block the appointment of additional Buick and
14 Chevrolet dealers in or near its assigned market area by prosecuting "protest"
15 proceedings with the California New Motor Vehicle Board ("Board") under Veh.
16 Code § 3062, further damaging GM's efforts to improve the sales of new Chevrolet
17 and Buick vehicles in Santa Monica, West Los Angeles and Culver City and their
18 environs for an indefinite time.

19 34. GM has performed, or stands ready to perform, its obligations under
20 the Settlement Agreement contingent upon a judgment and decree from this Court
21 ordering SMG to specifically perform its obligations under that agreement.

22 35. GM based on the facts stated above is entitled to a judgment and
23 decree requiring SMG to perform each and all of its obligations under the
24 Settlement Agreement forthwith.

THIRD CLAIM FOR RELIEF

(Preliminary and Permanent Injunction)

27 36. GM repeats and incorporates by reference its allegations contained in
28 paragraphs 1 through 35 *supra*.

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1 37. By reason of the foregoing alleged facts, including the threatened
2 irreparable harm to GM which SMG has conceded in paragraph 4.3 of the
3 Settlement Agreement, GM is entitled to a preliminary and permanent injunction
4 prohibiting SMG from prosecuting its arbitration claim under the Dealer Arbitration
5 Act, including without limitation scheduling a third day of hearing before Arbitrator
6 Kaplan or otherwise continuing to prosecute its arbitration claim against GM.

7 WHEREFORE, GM prays judgment as follows:

18 (C) For a preliminary and permanent injunction commanding SMG to
19 cease and desist forthwith from any further prosecution of the AAA arbitration
20 proceedings;

21 (D) For an award of attorney's fees and costs of suit incurred herein
22 pursuant to paragraph 4.4 of the Settlement Agreement and applicable law; and

23 (E) For such other or further relief as the Court may deem proper.

24 DATED: June 28, 2010

GREGORY R. OXFORD
ISAACS CLOUSE CROSE & OXFORD LLP

Bv

By: Gregory R. O.
Attorneys for Plaintiff
General Motors LLC

1 **PROOF OF SERVICE**
2
3

4 I am employed in the county of Los Angeles, State of California. I am over the age
5 of 18 and not a party to the within action. My business address is 21515 Hawthorne
6 Blvd., Suite 950, Torrance, California 90503.

7 **X VIA U.S. MAIL** on June 28, 2010, I served the foregoing documents
8 described as **COMPLAINT; APPLICATION FOR ORDER PERMITTING FILING**
9 **OF EXHIBIT A UNDER SEAL; EXHIBIT A; CERTIFICATION OF**
10 **INTERESTED PARTIES** on the parties in this action by U.S. mail, by placing a true
11 copy thereof enclosed in a sealed envelope addressed as follows:

12 **X VIA ELECTRONIC MAIL** on June 28, 2010, I served the foregoing
13 documents described as **COMPLAINT; APPLICATION FOR ORDER**
14 **PERMITTING FILING OF EXHIBIT A UNDER SEAL; EXHIBIT A;**
15 **CERTIFICATION OF INTERESTED PARTIES** on the parties in this action by U.S.
16 mail, by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

17 **X VIA FAXSIMILE** on June 28, 2010, I served the foregoing
18 documents described as **COMPLAINT; APPLICATION FOR ORDER**
19 **PERMITTING FILING OF EXHIBIT A UNDER SEAL; EXHIBIT A;**
20 **CERTIFICATION OF INTERESTED PARTIES** on the parties in this action by
21 U.S. mail, by placing a true copy thereof enclosed in a sealed envelope addressed as
22 follows:

23

Michael M. Sieving 1801 Parkcourt Place, Suite F-101 Santa Ana, CA 92701	

24

25 Executed on June 28, 2010 at Torrance, California. I declare under penalty of
26 perjury under the laws of the State of California that the above is true and correct.
27
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Gwendolyn Oxford

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Dolly Gee and the assigned discovery Magistrate Judge is Rosalyn M. Chapman.

The case number on all documents filed with the Court should read as follows:

CV10 - 4787 DMG (RCx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

Western Division
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

Southern Division
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

Eastern Division
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

Case 2:10-cv-04787-DMG-RC Document 1 Filed 06/28/10 Page 13 of 16 Page ID #:13
Name & Address: Gregory R. Ox SBN 62333
Isaacs Clouse Crose & Oxford LLP
21515 Hawthorne Boulevard, Suite 950
Torrance, California 90503
(310) 316-1990
(310) 316-1330 (facsimile)

ORIGINAL

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

GENERAL MOTORS LLC, <i>see attached</i>	PLAINTIFF(S)	CASE NUMBER
v.		CV 10 4787-DMG (RQ)
SANTA MONICA GROUP, INC., <i>See Attached</i>	DEFENDANT(S).	SUMMONS

TO: DEFENDANT(S): Santa Monica Group, Inc., Kayvan Naimi, Farinaz Naimi, Kamran Naimi and
Nilofar Naimi

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached complaint amended complaint counterclaim cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Gregory R. Oxford, whose address is 21515 Hawthorne Boulevard, Suite 950, Torrance, California 90503. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

Dated: 28 JUN 2010

By: Manish Dixit
Deputy Clerk

(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3).]

Case 2:10-cv-04787-DMG-RC Document 1 Filed 06/28/10 Page 14 of 16 Page ID #:14

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4 21515 Hawthorne Boulevard, Suite 950
Torrance, California 90503
Telephone: (310) 316-1990
Facsimile: (310) 316-1330

5 Attorneys for Plaintiff
General Motors LLC

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

12 GENERAL MOTORS LLC, a
Delaware limited liability company,

CASE NO.

**COMPLAINT FOR
(1) DECLARATORY
JUDGMENT THAT WRITTEN
SETTLEMENT AGREEMENT
IN BINDING AND
ENFORCABLE; (2) SPECIFIC
PERFORMANCE OF WRITTEN
SETTLEMENT AGREEMENT;
(3) INJUNCTIVE RELIEF**

Defendants.

21 Plaintiff General Motors LLC, for its complaint herein, alleges as follows:

The Parties and Jurisdiction

23 1. Plaintiff General Motors LLC (hereinafter "plaintiff" or "GM"), is a
24 limited liability company organized and existing under the laws of the State of
25 Delaware with its principal place of business in Detroit, Michigan. GM is in the
26 business of manufacturing and distributing new motor vehicles and related products
27 through a network of independent retail dealers throughout the United States,
28 including California.

Complaint

Case 2:10-cv-04787 Document 7447-1 Filed 10/19/10 Page 15 of 34 Page ID #:15
CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) GENERAL MOTORS LLC		DEFENDANTS SANTA MONICA GROUP, INC.; KAYVAN NAJMI; FARINAZ NAJMI; KAMRAN NAJMI; and NILOFAR NAJMI			
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) Gregory R. Oxford, Isaacs Clouse Cross & Oxford LLP 21515 Hawthorne Boulevard, Suite 950, Torrance CA 90503 (310) 316-1990		Attorneys (If Known) Michael M. Sieving, Law Offices of Michael M. Sieving 1801 Park Court Place, Suite F-101, Santa Ana CA 92701 (714) 541-0034			
II. BASIS OF JURISDICTION (Place an X in one box only.)		III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.)			
<input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)		Citizen of This State <input type="checkbox"/> PTF <input type="checkbox"/> DEF <input type="checkbox"/> 1 <input type="checkbox"/> 1 Incorporated or Principal Place of Business in this State <input type="checkbox"/> 4 <input checked="" type="checkbox"/> 4			
<input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)		Citizen of Another State <input checked="" type="checkbox"/> 2 <input type="checkbox"/> 2 Incorporated and Principal Place of Business in Another State <input type="checkbox"/> 5 <input type="checkbox"/> 5			
		Citizen or Subject of a Foreign Country <input type="checkbox"/> 3 <input type="checkbox"/> 3 Foreign Nation <input type="checkbox"/> 6 <input type="checkbox"/> 6			
IV. ORIGIN (Place an X in one box only.)					
<input checked="" type="checkbox"/> 1 Original <input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from another district (specify): <input type="checkbox"/> 6 Multi-District Litigation <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judge					
V. REQUESTED IN COMPLAINT: JURY DEMAND: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (Check 'Yes' only if demanded in complaint.) CLASS ACTION under F.R.C.P. 23: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No MONEY DEMANDED IN COMPLAINT: \$ _____					
VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.) Consolidated Appropriations Act, sec. 747, 2010, P.L.111-117; declaratory relief; specific performance; injunction; enforcement of written settlement agreement					
VII. NATURE OF SUIT (Place an X in one box only.)					
OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/ Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	TORTS <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus- Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	TORTS <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 520 Other Personal Property Damage <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/ Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety /Health <input type="checkbox"/> 690 Other	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 BIWC/DIWV (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609

CV 10 4787

FOR OFFICE USE ONLY: Case Number: _____

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
 Case 2:10-cv-04787-DMC Document 1 Filed 06/28/10 Page 16 of 16 Page ID #:16
 CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? No Yes
 If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? No Yes
 If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

(Check all boxes that apply) A. Arise from the same or closely related transactions, happenings, or events; or
 B. Call for determination of the same or substantially related or similar questions of law and fact; or
 C. For other reasons would entail substantial duplication of labor if heard by different judges; or
 D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.
 Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District: [*]	California County outside of this District; State, if other than California; or Foreign Country
	Incorporated in Delaware; principal place of business in Michigan

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.
 Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District: [*]	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles (all defendants)	

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.
 Note: In land condemnation cases, use the location of the tract of land involved.

County in this District: [*]	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved.

X. SIGNATURE OF ATTORNEY (OR PRO PER): Craig M. Dierckx

Date June 28, 2010

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code Abbreviation Substantive Statement of Cause of Action

861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))

EXHIBIT M

Westlaw

Page 2

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(Cite as: 2010 WL 2740166 (C.D.Cal.))

Only the Westlaw citation is currently available.

United States District Court,
C.D. California.
GENERAL MOTORS LLC, a Delaware limited li-
ability company, Plaintiff,
v.
SANTA MONICA GROUP, INC., et al., Defendants.
No. CV 10-04787 DMG (RCx).

July 9, 2010.

Gregory R. Oxford, Issacs Clouse Crose & Oxford
LLP, Torrance, CA, for Plaintiff.

**ORDER GRANTING PRELIMINARY
INJUNCTION**

DOLLY M. GEE, District Judge.

*1 This matter is before the Court on the Order to Show Cause why a preliminary injunction should not issue, which was set for hearing on July 9, 2010. For the reasons set forth below, the preliminary injunction is GRANTED.

I.

BACKGROUND

On June 28, 2010, Plaintiff filed a complaint in this Court seeking (1) declaratory judgment, (2) specific performance, and (3) preliminary and permanent injunction. On June 29, 2010, Plaintiff filed an application for temporary restraining order ("TRO") and order to show cause why a preliminary injunction should not issue seeking to restrain Defendants Santa Monica Group, Inc. ("SMG"), Kayvan Naimi, Farinaz Naimi, Kamran Naimi and Nilofer Naimi from continuing to prosecute arbitration proceedings pending before the AAA and Arbitrator Kaplan, Case No. 72-532-00050-10 pursuant to the **Dealer Arbitration Act**. Defendants filed an opposition on July 1, 2010, and on the same day, Plaintiff filed its reply. According to Defendants' opposition, the arbitration is scheduled to resume on July 13, 2010. In its reply, GM urged the Court to grant the TRO or,

alternatively, schedule a prompt preliminary injunction hearing in advance of the July 13 hearing date set by the **Arbitrator**. On July 2, 2010, in light of the resumption date for the arbitration and Plaintiff's alternative request for a prompt hearing on its request for preliminary injunction, this Court, rather than ruling on the TRO application, ordered Defendants to appear on July 9, 2010 to show cause why a preliminary injunction should not issue.

II.

**LEGAL STANDARD GOVERNING
PRELIMINARY INJUNCTIONS**

Federal Rule of Civil Procedure 65 governs the issuance of preliminary injunctions. The purpose of such injunctions is to preserve the rights and relative positions of the parties, *i.e.*, the *status quo*, until a final judgment issues. *See U.S. Philips Corp. v. KBC Bank N.Y.*, 590 F.3d 1091, 1094 (9th Cir.2010) (citing *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395, 101 S.Ct. 1830, 68 L.Ed.2d 175 (1981)). In light of this purpose and because the factual record under consideration at the preliminary injunction stage may differ materially from the fully developed factual record, preliminary injunctions frequently provide little guidance as to the appropriate disposition on the merits. *See Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 876-77 (9th Cir.2009); *see also Brown v. Chote*, 411 U.S. 452, 456, 93 S.Ct. 1732, 36 L.Ed.2d 420 (1973).

Plaintiffs seeking a preliminary injunction in a case involving the public interest must show that (1) they are likely to succeed on the merits; (2) they are likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in their favor; and (4) an injunction is in the public interest. *Dominguez v. Schwarzenegger*, 596 F.3d 1087, 1092 (9th Cir.2010), *petition for cert. filed*, 78 USLW 3581 (Mar. 24, 2010); *see also Winter v. Natural Res. Def. Council, Inc.*, --- U.S. ----, 129 S.Ct. 365, 374, 172 L.Ed.2d 249 (2008).

III.

Not Reported in F.Supp.2d, 2010 WL 2740166 (C.D.Cal.)
(Cite as: 2010 WL 2740166 (C.D.Cal.))

DISCUSSION

*2 Plaintiff seeks a preliminary injunction restraining and enjoining Defendant SMG, based on a valid and binding written settlement agreement, from continuing to prosecute **arbitration** proceedings now pending before the American **Arbitration** Association ("AAA") as AAA Case No. 72-532-0050-10 ("AAA Arbitration") pursuant to section 747, Consolidated Appropriations Act, 2010, Pub. Law 11-117, 123 Stat. 3034 (2009) (the "Dealer Arbitration Act").

A. Plaintiff Has Demonstrated A Likelihood Of Success On The Merits

All parties agree that pursuant to a request for **arbitration** by SMG, the parties herein were involved in **arbitration** proceedings before **Arbitrator** Kaplan on June 8 and 9, 2010. In **arbitration**, Defendants brought their claims for reinstatement of their franchise thereby challenging SMG's "Wind-Down Agreement," ^{FN1} under which non-retained **dealers** like SMG were permitted to continue certain dealership operations until October 31, 2010, at which time they were required to terminate their **Dealer** Agreement. During the course of these proceedings, the parties engaged in settlement negotiations. All parties executed the Settlement and Deferred Termination Agreement and Release, which states that "[t]his Settlement and Deferred Termination Agreement and Release ('Agreement') is entered into as of June 9, 2010 by and between General Motors LLC ('GM'), on the one hand, and Santa Monica Group, Inc. ('SMG') and SMG's owners Kayvan Naimi, Farinaz Naimi, Kamran Naimi and Nilofer Naimi ('Owners'), on the other hand, collectively the 'Parties.' Among its terms, the Agreement provides that "[u]pon execution and delivery of this Agreement (a) SMG shall immediately request that the American **Arbitration** Association dismiss the **Arbitration**"

FN1. GM's predecessor, General Motors Corporation n/k/a Motors Liquidation Company ("Old GM"), as part of its bankruptcy proceedings, entered into these "Wind-Down Agreements" with dealerships Old GM chose not to retain. These dealerships were given the right to file arbitration claims under the **Dealer Arbitration Act**.

Although Defendants concede that they executed the

Agreement, their sole contention on the merits is that the settlement contemplated the execution and/or filing of other documents, which Defendants have not done. However, as explained by Plaintiff in its reply brief, "[w]hile it is true that the Settlement Agreement contemplates preparation and execution of additional documents, the Settlement Agreement obligates the parties, including defendants, to prepare and execute those documents" (GM Reply, ¶ 2 [Doc. # 1])

As such, Plaintiff has established that it has a binding written settlement agreement under which SMG is obligated to request that the American Arbitration Association dismiss the Arbitration.^{FN2} Evidence presented by defendants that they have not executed subsequent documents or performed subsequent acts does not negate the formation of a binding contract. Instead, it is evidence of defendants' breach thereof.

FN2. In their opposition to the preliminary injunction, Defendants, referring to the Settlement and Deferred Termination Agreement and Release as the "initial settlement agreement," concede that they executed the agreement on June 18, 2010. It is unclear why they make a point of saying that they notified counsel for GM "(prior to the execution by GM of the initial settlement agreement) that, upon reviewing the terms of what the initial settlement agreement required, they could not execute or authorize the execution of the remainder of the documents necessary to complete the settlement terms." [Doc. # 15.] Defendants do not argue that this prior notification to GM's counsel was a revocation of their offer prior to GM's execution in acceptance thereof. Defendants do not controvert Plaintiff's evidence that prior to Defendants' execution of the "initial settlement agreement," Defendants were informed by GM's counsel that the draft which Defendants subsequently signed was acceptable to GM. As such, Defendants' execution and delivery of the "initial settlement agreement" constituted acceptance of GM's offer. "Parties may engage in preliminary negotiations, oral or written, in order to reach an agreement. These negotiations ordinarily result in a binding contract when all of the terms are definitely under-

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stood, even though the parties intended that a formal writing embodying these terms was to be executed later." 1 B.E. Witkin, *Summary of California Law* § 133 (10th ed. 2005) (Citations omitted).

B. Plaintiff Is Likely To Suffer Irreparable Harm In The Absence Of Preliminary Relief

Issuance of a preliminary injunction will maintain the *status quo*. In the absence of a preliminary injunction, the arbitration proceedings will resume on July 13, 2010, which would completely deprive GM of an important benefit of its bargain. Moreover, absent a preliminary injunction, GM would face the risk of an adverse arbitration award which, during the pendency of this action, could prevent GM from establishing a planned Chevrolet dealership in Culver City-a harm for which legal compensation is not easily ascertainable.

*3 Consequently, Plaintiff has demonstrated a likelihood of irreparable harm unless a preliminary injunction is issued.

C. The Balance Of Equities Tips In Plaintiff's Favor

In assessing whether a plaintiff has met its burden of establishing that the balance of equities tips in its favor, the district court has a duty to balance the interests of all parties and weigh the damage to each. *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1138 (9th Cir.2009).

As stated above, a preliminary injunction will maintain the *status quo*, in the absence of which Plaintiff is likely to suffer irreparable harm. On the other hand, if a preliminary injunction issues, Defendants will lose its opportunity to reopen arbitration proceedings. This potential harm Defendants face is lessened because they do not controvert the fact that they voluntarily entered into the Agreement promising that "[u]pon execution and delivery of this Agreement (a) SMC shall immediately request that the American Arbitration Association dismiss the Arbitration" (Settlement Agreement, ¶ 2.1)

Accordingly, the Court finds that the balance of equities tips in favor of Plaintiff.

D. An Injunction Is In The Public Interest

When the reach of an injunction is narrow, limited only to the parties, and has no impact on non-parties, the public interest will be at most a neutral factor in the analysis rather than one that favors granting or denying the preliminary injunction. *Stormans*, 586 F.3d at 1138-39. If, however, the impact of an injunction reaches beyond the parties, carrying with it a potential for public consequences, the public interest will be relevant to whether the district court grants the preliminary injunction. *Id.* at 1139. In this case, the public interest is served by the enforcement of a valid and binding contract.

Plaintiff has demonstrated that (1) there is a likelihood of success on the merits; (2) there is a likelihood of irreparable harm in the absence of injunctive relief; (3) the balance of equities tips in its favor; and (4) an injunction is in the public interest. Consequently, the Court grants Plaintiff's Motion for Preliminary Injunction.

E. Posting of A Bond

Rule 65(c) permits a court to grant preliminary injunctive relief "only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." Notwithstanding the seemingly mandatory language, "Rule 65(c) invests the district court with discretion as to the amount of security required, if any." *Johnson v. Couturier*, 572 F.3d 1067, 1086 (9th Cir.2009) (internal quotation marks omitted). A district court may dispense with the filing of a bond if it concludes that there is no realistic likelihood of harm to the defendant from the injunction. *Id.* The burden of establishing the amount of bond necessary to secure against the wrongful issuance of an injunction rests with the defendant. *Philips Elecs. N. Am. Corp. v. Hope*, 631 F.Supp.2d 705, 724 n. 14 (M.D.N.C.2009) (citing *Doctor's Assocs., Inc. v. Stuart*, 85 F.3d 975, 985 (2d Cir.1996).

*4 Here, Defendants identify no costs or damages that they would sustain as a result of an injunction, except for their attorneys' fees and costs, which Defendants estimate to be approximately \$50,000. The Court therefore orders that Plaintiff post a security

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(Cite as: 2010 WL 2740166 (C.D.Cal.))

bond in connection with the injunction in the amount of \$50,000.

IV.

CONCLUSION

In light of the foregoing, the Court GRANTS a Preliminary Injunction as follows: Defendants Santa Monica Group, Inc., Kayvan Naimi, Farinaz Naimi, Kamran Naimi and Nilofar Naimi, their officers, agents, servants, employees, attorneys and all those in active concert or participation with Defendants are hereby restrained and enjoined, pending trial on the merits herein, from continuing to prosecute arbitration proceedings now pending before the AAA and Arbitrator Kaplan, Case No. 72-532-00050-10, pursuant to the Dealer Arbitration Act.

Defendant shall post a bond in the amount of \$50,000.

IT IS SO ORDERED.

C.D.Cal.,2010.
General Motors LLC v. Santa Monica Group, Inc.
Not Reported in F.Supp.2d, 2010 WL 2740166
(C.D.Cal.)

END OF DOCUMENT

EXHIBIT N

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

LESON CHEVROLET COMPANY, INC.

CIVIL ACTION NO.

VERSUS

GENERAL MOTORS LLC

SECTION " "
JUDGE

MAG. DIV. " "
MAGISTRATE

NOTICE OF REMOVAL

The Notice of Removal of Defendant, General Motors LLC ("GM"), removing this civil action from the Louisiana Motor Vehicle Commission, and to the extent required, reserving any and all rights, objections, and defenses, respectfully represents as follows:

BACKGROUND

1.

Plaintiff, Leson Chevrolet Company, Inc. ("Leson"), at all pertinent times herein was and is a Chevrolet motor vehicle dealer, and which since June of 2009 has been operating under a "Wind-down Agreement" specifically approved and authorized by the United States Bankruptcy Court for the Southern District of New York.

2.

In 2008 and 2009, General Motors Corporation ("Old GM"), which was the manufacturer and distributor of Chevrolet products, experienced severe financial distress. One of the causes of Old GM's financial situation was its legacy dealer network. *See In re General Motors Corp.*,

407 B.R. 463, 513-14 (Bankr. S.D.N.Y. 2009) ("All concerned with GM's future knew that GM had to slim down and improve its dealer network.").

3.

After extensive discussions with the United States Government, Old GM commenced a Chapter 11 bankruptcy proceeding to implement a sale of substantially all of its assets under §363 of the Bankruptcy Code. *See* 11 U.S.C. §363. The bankruptcy case was filed on June 1, 2009 in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court").

4.

As part of the bankruptcy process, a new company (now known as GM), was formed. GM purchased some of Old GM's assets. GM agreed to assume the dealer agreements of some, but not all, of Old GM's dealers. As the Bankruptcy Court stated, the sale from Old GM to GM "contemplated the assumption by GM and the assignment to . . . GM of dealer franchise agreements relating to 4,100 of its 6,000 dealerships, modified in ways to make GM more competitive . . . But GM cannot take all of the dealers on the same basis." *In re General Motors Corp.*, 407 B.R. at 476.

5.

In preparation for the bankruptcy proceedings, Old GM used objective criteria to identify the poorly performing dealers who would not become part of GM's dealer network on a continuing basis.

6.

Old GM identified Leson as one of the poorly performing dealers who would not become part of GM's dealer network.

7.

Although Old GM, during the bankruptcy, could have simply terminated its agreements with the non-retained dealers, such as Leson, Old GM instead offered these non-retained dealers a "Wind-down Agreement." The purpose of the "Wind-down Agreement" was to provide the non-retained dealers with an opportunity to avoid an abrupt termination of their operations and also to provide them with financial assistance.

8.

When it filed for bankruptcy on June 1, 2009, Old GM sent Leson a letter notifying Leson of the decision that it would not be retained as part of GM's dealer network. Ex. 1. Old GM also provided Leson with a "Wind-down Agreement," which Leson signed. Ex. 2. In the agreement:

- Leson was given until October 31, 2010 within which to wind down its operations.
- Old GM agreed that Leson would be paid a very substantial sum as financial assistance.¹
- The parties agreed that the Bankruptcy Court would have "exclusive jurisdiction" concerning the "Wind-down Agreement" and "any other matter relating thereto."
- Leson agreed not to institute "any proceeding in any court or administrative proceeding" against Old GM or its assignee.
- The parties agreed that Old GM or its assignee would have the right to "an immediate and permanent injunction to be issued by any court of competent jurisdiction" to prevent a breach of the agreement by Leson.
- Leson agreed that it would be obligated to pay attorney's fees to Old GM or its assignee in any action relating to Leson's breach of the agreement.

¹ The amount of the wind-down payment has been redacted in Exs. 2, 4 and 5.

9.

As a part of the bankruptcy sale of certain assets from Old GM to GM, the Bankruptcy Court approved Old GM's assignment of its rights and obligations under the Leson "Wind-down Agreement" to GM.

10.

After the bankruptcy proceedings, certain GM dealers who had executed "Wind-down Agreements" sought relief from Congress and various bills were introduced that would have provided expansive rights to dealers who were part of the pre-bankruptcy networks. Congress chose not to proceed with any of those, however. Instead, Congress enacted a narrowly tailored right of review under Section 747 of the Consolidated Appropriations Act, 2010 (Pub. L. No. 111-117, 123 Stat. 3034 (2009)) (the "Arbitration Act" or "§ 747"). Ex. 3. That statute allowed these dealers to file arbitration claims applying to be reinstated or added to GM's dealer network.

11.

Under §747, an arbitrator was required to consider seven statutory factors and three balancing interests for determining whether a dealer "should be added to the [GM] dealer network." §747(d). If a dealer prevailed at the arbitration, the statute then required that GM issue "a customary and usual letter of intent to enter into a sales and service agreement" to the dealer. §747(e).

12.

Leson chose to arbitrate under §747. On June 18, 2010, the arbitrator determined that Leson had satisfied the factors and balancing interests under §747.

13.

As a result, in compliance with §747, GM sent its form "customary and usual letter of intent" to Leson (hereinafter "the LOI"). Ex. 4. The LOI outlines GM's standard business

requirements to be a dealer. These requirements include, by way of example: a requirement that the dealer maintain a certain level of net working capital and a requirement that the dealer obtain a sufficient line of credit (normally referred to as "floor plan" financing) to finance the purchase of new vehicles from GM.

14.

The LOI provided that its terms would be implemented by means of an amendment to the "Wind-down Agreement."

15.

Leson signed the LOI on July 1, 2010. Ex. 5.

16.

Despite having signed the LOI, Leson later complained that certain terms of the LOI were "unfair." For example, Leson complained that the provision in the LOI that Leson maintain net working capital in the amount of \$2.85 million was unfair. Additionally, Leson has apparently been unable to obtain a commitment for floor plan financing as is required by the LOI.

17.

The LOI required Leson to satisfy the terms of the LOI within sixty (60) days of the date of signature (meaning that the requirements under Leson's LOI would need to be satisfied by September 1, 2010).² However, at Leson's request, GM agreed to grant several extensions, with the most recent extension allowing Leson until the end of September, 2010, within which to satisfy the requirements in the LOI.

² The deadline for satisfying the net working capital requirement is October 31, 2010.

18.

Without prior notice to GM, Leson filed a complaint with the Louisiana Motor Vehicle Commission ("Commission") on September 14, 2010 (hereinafter "Commission Complaint").

Ex. 6. The Commission Complaint repeatedly avers that the LOI violates §747. The Commission Complaint expressly asks the Commission to interpret and apply federal law, *i.e.*, what Congress intended in §747.

19.

Also without prior notice to GM, Leson sought and obtained an ex parte order from the Commission. Ex. 7. The ex parte order prohibits GM from terminating its relationship with Leson until further proceedings are held before the Commission. The order was signed by the Executive Director of the Commission apparently without a meeting or vote of the Commission. This order is in direct conflict with the "Wind-down Agreement" which remains in full force and effect.

JURISDICTION

20.

This matter, including all claims and causes of action herein, are removable to this Court pursuant to the following provisions, by way of example only: 28 U.S.C. §§157, 1331, 1332, 1334, 1441 and 1452.

21.

This Court has federal question jurisdiction under 28 U.S.C. §1331 in that this civil action arises under the laws of the United States. For example, on the face of the Commission Complaint, Leson seeks an interpretation of §747, which is a federal statute. Interpretation of that provision is the threshold and controlling issue in this matter.

22.

Furthermore, a federal question is not merely raised on the face of the Commission Complaint, state law is completely preempted under any scenario. As noted above, during its bankruptcy, Old GM executed and assigned “Wind-down Agreements” to GM under the Bankruptcy Court’s orders covering non-retained dealers such as Leson. The Bankruptcy Court approved these “Wind-down Agreements.” *See In re Gen. Motors Corp.*, 407 B.R. at 513-14. In that decision, the Bankruptcy Court found that to the extent that “dealer protection laws” (either state or federal) “impair the ability to reject, or to assume and assign, they must be trumped by federal bankruptcy law. And to the extent that non-bankruptcy law prohibits debtors and their contract counterparties from finding mutually satisfactory less draconian alternatives to rejection, it likewise must be trumped.” *Id.* at 515; *see also id.* at 516. Thus, Leson’s ultimate wind-down of operations was determined as a matter of federal bankruptcy law, and no state law claim could disrupt that order.

23.

Rather than undo the effect of these orders, §747 created a *limited* right for certain dealers to apply to be reinstated or added back to GM’s network if they prevailed in the arbitration proceedings. It established a very narrow, specific form of relief for prevailing dealers: GM was to provide them with GM’s “customary and usual letter of intent to enter into a sales and service agreement.” *See* § 747(e). Section 747 does not mention any additional state law remedies. Section 747 occupies the entire field of whether and how a prevailing arbitrating dealer must be treated by GM, leaving no room for state laws. Thus, Leson’s challenge to the LOI and the “Wind-down Agreement” is a matter of federal law.

24.

This Court also has bankruptcy jurisdiction under 28 U.S.C. §1334 because this action arises in, arises under, and/or is related to Old GM's bankruptcy proceeding, pending in Case No. 09-50026 on the docket of the United States Bankruptcy Court for the Southern District of New York. This matter is also a "core proceeding."

25.

By way of example, in the "Wind-Down Agreement" executed by Leson and Old GM, which was subsequently assigned to and assumed by GM and approved by the Bankruptcy Court, the Bankruptcy Court retained "exclusive jurisdiction" over any disputes concerning the issues in that agreement "and any other matter relating thereto." Ex. 2, ¶13.

26.

The current business relationship between Leson and GM continues to be governed by the "Wind-down Agreement" and, thus, this matter relates to that agreement. Indeed, until Leson timely fulfills the requirements of the LOI, Leson's relationship with GM is solely governed by the "Wind-down Agreement." Yet the Commission Complaint and the ex parte order entered by the Commission seek relief which is in direct conflict with the terms of that agreement.

27.

Moreover, the LOI itself provides that Leson's reinstatement will be controlled by an amendment to the "Wind-down Agreement." Exs. 4 and 5. That amendment retains the provision of the "Wind-down Agreement" pertaining to *exclusive* bankruptcy court jurisdiction.

Id.

28.

This Court also has diversity jurisdiction pursuant to 28 U.S.C. §1332. The parties are diverse and the amount in controversy exceeds \$75,000.00.

29.

Leson is a corporation organized and existing under the laws of the State of Louisiana with its principal place of business in Harvey, Louisiana.

30.

GM is and was a limited liability company organized and existing under the laws of the State of Delaware with its principal place of business in Michigan.

31.

The amount in controversy exceeds \$75,000.00 because the subject of the Commission Complaint (that is, Leson's dealership interest) is significantly greater than \$75,000.00.

REMOVAL IS PROPER

32.

GM was served with the Commission Complaint on September 17, 2010. Thus, this Notice of Removal is timely.

33.

The United States District Court for the Eastern District of Louisiana is the federal judicial district embracing the Louisiana Motor Vehicle Commission, where this matter was originally filed (the Commission is based in Metairie, Louisiana). Venue, therefore, is proper in this district.

34.

GM attaches a copy of any and all process, pleadings, and orders served upon it. Exs. 6 -

8.

35.

GM certifies, through undersigned counsel, that the Notice of Removal will be served promptly on Leson and will be filed with the Commission.

WHEREFORE, Defendant, General Motors LLC, prays that its Notice of Removal be deemed good and sufficient.

Respectfully submitted,

/s/ Thomas A. Casey, Jr.

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Counsel for Defendant, General Motors LLC

CERTIFICATE OF SERVICE

I hereby certify that, on this 27th day of September, 2010, I caused a copy of the foregoing Notice of Removal to be sent by telecopy and via first class mail, postage pre-paid to the following:

Leson Chevrolet Company, Inc.
through its counsel of record:

EDWIN A. STOUTZ, JR.
Stoutz & Stoutz
3606 Canal Street
New Orleans, Louisiana 70119

/s/ Thomas A. Casey, Jr.
THOMAS A. CASEY, JR. (#1291)